IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4781 of 2004
With
SPECIAL CIVIL APPLICATION No. 4783 of 2004
With
SPECIAL CIVIL APPLICATION No. 4853 of 2004
With
SPECIAL CIVIL APPLICATION No. 4854 of 2004
With
SPECIAL CIVIL APPLICATION No. 4855 of 2004

For Approval and Signature:
HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

J.P.PATEL - Petitioner(s)
Versus
MORBI NAGARPALIKA - Respondent(s)

==========

Appearance :

In SCA No.4781/04 & SCA No.4783/2004
MR IS SUPEHIA for Petitioner(s) : 1,
NANAVATY ADVOCATES for Respondent(s) : 1,

In SCA No.4853/04,4854/2004 & 4855/2004
MR AR THACKER for Petitioner(s) : 1,
NANAVATY ADVOCATES for Respondent(s) : 1,
MS REETA CHANDARANA, AGP FOR Respondent(s)2,3.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 24/03/2006

ORAL JUDGMENT

1.In this group of petitions, the petitioners who are retired employees of Morbi Municipality are seeking pensionary benefits. Broadly stated, the issues arising are that the petitioners retired from the service of the respondent-Municipality when there was no pension scheme applicable. They were covered by CPF Scheme. Upon their retirement they were also paid their Provident Fund and other post retirement benefits. Subsequently, however the respondent-Municipality formulated the pension scheme and offered coverage thereof to the employees who had retired after 01-04-1995. Such employees however had to exercise option to switch over to pension scheme and had to surrender the employer's contribution to the Provident Fund with certain percentage of interest. The case of the petitioners is that they are all covered by the cut off period provided by pension scheme formulated by the Municipality and had also exercised their option for being governed under the pension scheme within time permitted. The respondent-Municipality however did not cover the petitioners in the pension scheme contending that the petitioners should first deposit with Municipality the Provident Fund component which the

employees were required to surrender in favour of the Municipality. The bone of contention between the parties here is that the petitioners have been urging the Municipality to adjust their pensionary benefits towards their liability to account for the part of the Provident Fund received by them at the time of retirement whereas the Municipality has been urging that they had to first deposit the amounts demanded by the Municipality and only thereafter, they would get the coverage of the pension scheme.

2. So far as the petitioner in Special Civil Application No.4781/2004 is concerned, he retired on superannuation with effect from 30-11-1995 as Tax Superintendent. Pursuant to pension scheme formulated by the Municipality by resolution dated 15-02-1999, he opted for the pension scheme within the time permitted. His option was accepted by the respondent by order dated 09-10-2003. The respondent however, asked the petitioner to pay an amount of Rs. 3,02,430/- before 31-03-2004. This was stated to be demanded on part of the Municipality towards Provident Fund and interest to be surrendered by the petitioner for availing of the pension scheme. It was stated that other amount shall

have to be deposited separately. The petitioner pointed out to the respondents that no details of the demand has been given and according to his calculation the amount of Provident Fund plus interest required to be surrendered by him would never come to Rs. 3,02,430/-. He requested the Municipality to adjust the amount due and payable against the arrears of pension payable to him as per the entitlement. Municipality however, stated vide communication dated 20-02-2004 that there is no such provision for adjustment in the Pension Rules of Nagarpalika and that the petitioner should deposit the amount as directed within 15 days or face the possibility of his name being struck off from the pension scheme. The petitioner however, once again requested by his letter dated 04-03-2004 that the amount demanded is too high and he should be given proper calculation thereof. The Municipality however, on the ground that the petitioner did not deposit the amount as demanded, struck off his name from the pension scheme and communicated the same to the petitioner vide their letter dated 24-03-2004.

3. In Special Civil Application No.4783/2004 the petitioner retired on superannuation with effect from

31-05-1996 as an Octroi Clerk. He also pursuant to pension scheme formulated by the Municipality by resolution dated 15-02-1999, opted for the pension within the time permitted. His option was accepted by the respondent by order dated 09-10-2003. The respondent however asked the petitioner to pay an amount of Rs. 2,22,383/- before 31-03-2004 vide letter dated 15-12-2003. This was supposed to be towards the principal amount of Provident Fund and interest to be surrendered by the petitioner for availing of the pension scheme. The petitioner by his letter dated 29-12-2003 pointed out that no details of such a demand has been given. He requested the Municipality to adjust the amount due and payable towards the arrears of pension payable to him as per the entitlement. Municipality however, stated vide communication dated 20-02-2004 that there is no such provision for adjustment in the Pension Rules of Nagarpalika and that the petitioner should deposit the amount as directed within 15 days or face the possibility of his name being struck off from the pension scheme. On 04-03-2004, the petitioner again requested the Municipality to given him the break up of the amount demanded. Since the petitioner did not deposit the amount as directed

by the respondent, his name was struck off from the pension scheme which was communicated to him vide letter dated 24-03-2004.

4. The petitioner in Special Civil Application No. 4854/2004, retired on superannuation with effect from 31-08-1996 as a Property Tax Inspector. He also opted for pension scheme of the respondent-Municipality. By order dated 09-10-2003 his option was accepted. The petitioner received a letter dated 15-12-2003 informing him to deposit Rs.2,17,425/- within 15 days of the receipt of letter. This was supposed to be Provident Fund component with interest required to be surrendered by the employee for availing of the benefits of the pension scheme. The petitioner replied to the said letter by his letter dated 29-12-2003. He requested for being supplied the details of the demand and also requested the Municipality to adjust the said amount against the arrears of pension payable to the petitioner. The Municipality however, did not accept his request and sent a reminder on 20-02-2004 informing him that he should make payment of 2,17,425/- within 15 days. Since the petitioner could not deposit the amount, his name was struck from the pension scheme by

order dated 24-03-2004.

5. The petitioner in Special Civil Application No. 4853/2004, retired on superannuation with effect from 30-04-1998 as a Cashier cum Treasure. He also opted for pension scheme of the respondent-Municipality. By order dated 09-10-2003 his option was accepted. The petitioner received a letter dated 15-12-2003 informing him to deposit Rs.2,91,046/- within 15 days of the receipt of letter. This was supposed to be Provident Fund component with interest required to be surrendered by the employee for availing of the benefits of the pension scheme. The petitioner replied to the said letter by his letter dated 26-12-2003. He requested for being supplied the details of the demand and also requested the Municipality to adjust the said amount against the arrears of pension payable to the petitioner. The Municipality however, did not accept his request and send a reminder on 20-02-2004 informing him that he should make payment within 15 days. Since the petitioner could not deposit the amount, his name was struck from the pension scheme by order dated 24-03-2004.

6.The petitioner in Special Civil Application No. 4855/2004, retired on superannuation with effect from 29-02-1996 as a Property Tax Inspector. He also opted for pension scheme of the respondent-Municipality. By order dated 09-10-2003 his option was accepted. The petitioner received a letter dated 15-12-2003 informing him to deposit Rs.2,04,641/- within 15 days of the receipt of letter. This was supposed to be Provident Fund component with interest required to be surrendered by the employee for availing of the benefits of the pension scheme. The petitioner replied to the said letter by his letter dated 29-12-2003. He requested for being supplied the details of the demand and also requested the Municipality to adjust the said amount against the arrears of pension payable to the petitioner. The Municipality however, did not accept his request and send a reminder on 20-02-2004 informing him that he should make payment within 15 days. Since the petitioner could not deposit the amount, his name was struck from the pension scheme by order dated 24-03-2004.

7.All these petitioners have therefore, approached this Court against the decision of the respondent-

Municipality in striking off their names from the pension scheme though once their options for being covered under the pension scheme were accepted.

8. The learned advocates appearing for the petitioners submitted that respondent-Municipality gravely erred in striking off the names of the petitioners from the pension optees. It was contended that demand made by the respondent-Municipality towards CPF amount with interest had no basis. No details of the calculation were supplied though repeatedly demanded by the petitioners. It was contended that the petitioners had retired long back between the period ranging from 1995 to 1998. It was therefore impossible to raise such a large sum ranging between Rs. 2 lakhs to Rs. 3 lakhs within a span of 15 days or even within some extended time that the respondent-Municipality granted to them. It was further contended that in any case even while keeping the dispute of the petitioners regarding the quantification of demand made by the respondents alive, the petitioners had agreed to the said amounts being adjusted towards entitlement of the petitioners towards pension arrears. It was submitted that the respondent-Municipality ought to have taken a reasonable stand and

ought to have made adjustment towards such demand as against pension arrears payable to the petitioners.

9.On the other hand learned advocate for the respondent-Municipality submitted that respondent-Municipality evolved the pension scheme. As per the scheme, the employees who had retired and who were given option had to surrender the employees contribution to CPF with interest as provided in the pension Scheme and in particular in Clause(a) of para.5 of the scheme. He submitted that the petitioners had, despite being given sufficient opportunities, did not deposit the amount. It was not open for the respondent-Municipality to adjust the same against the arrears of pension payable to the petitioners. It was submitted that the financial condition of the Municipality is not sound. Therefore, Municipality should not be put to any additional burden of payment of pension.

10.Having heard the learned advocates appearing for the parties following facts clearly evolve.

1)The respondent-Municipality has evolved and implemented the pension scheme vide resolution dated 15-12-1999.

Such pension scheme gives option to employees who were in service on 01-04-1995 to opt for pension scheme. Such employees like the petitioners since were governed by CPF Scheme at the time of retirement had to surrender certain part of the Provident Fund in favour of the pension fund. They had to refund the amount of CPF with interest.

2)All the petitioners were covered under the cut off date provided for giving option for switching over to pension scheme.

3)All the petitioners opted for being governed by the pension scheme. Their options were actually accepted by the Municipality.

4)Upon acceptance of the option, Municipality demanded certain amounts towards CPF contribution with interest from the petitioners. The petitioners made two submissions. Firstly, they disputed the quantification of the demand. They also asked the details of how the Municipality came to such figures. Secondly, they also stated that such amount be adjusted towards the pensions arrears payable to them. The Corporation

reiterated the demand to deposit the CPF amount with interest and rejected the request for adjusting the same against the pension arrears. Eventually, names of all the petitioners were struck of from the list of pension optees.

11.I find that the petitioners were justified in requesting the respondent-Municipality to adjust the amount payable by them towards the pension arrears which would have been available to them under the pension scheme.

12.All the petitioners had retired between the period ranging from 1995 to 1998. In the year 2003 they were asked to deposit the sum ranging between Rs. 2 lakhs to Rs. 3 lakhs within a short time. All the petitioners had retired under CPF Scheme. Arranging such a large amount in a short span of time would have been absolutely impossible for them. They also had certain doubt about the calculations of amounts made by the respondent-Municipality. They therefore, requested the Municipality to provide for the break up. In any case they agreed that the CPF Contribution with interest to be deposited by them with the Municipality be adjusted

towards their pension arrears. Municipality rejected the request solely on the ground that there is no such provision under the pension rules.

13.It is not in dispute that the petitioners would have been entitled to receive substantial amount towards pension arrears when in the year 2003-2004 the Municipality was raising demands towards depositing of CPF amount. All the petitioners who had retired during the period ranging from 1995 to 1998 would have accumulated substantial pension arrears. It is not even the case of the Municipality that pension arrears were not payable. The petitioner of Special Civil Application No.4781/2004 has stated in the petition that the Municipality demanded a sum of Rs 3,02,430/- towards CPF contribution with interest whereas the pension arrears of the petition came to Rs.4,85,098.80. In the affidavit in reply the respondent-Municipality has not disputed these averments. Other petitioners have also made similar averments. Even other-wise it can easily be seen that the petitioners were entitled to receive substantial arrears of pension by the time Municipality was directing the petitioners to deposit the CPF amount with interest. There is absolutely no

reason which prevented the Municipality from taking a pragmatic stand and accepting the request of the petitioners to permit them to adjust the demand of the Municipality towards petitioners' entitlement of the pension arrears. Asking the petitioners to first deposit the CPF Contribution with interest and then only to consider releasing their pension benefits including the arrears was unjust, unfair and rigid stand adopted by the respondent-Municipality. One cannot lose sight of the fact that all the petitioners had retired from services long back. They were governed by CPF Scheme at the time of retirement. To expect such retirees to raise Rs. 2 Lakhs to Rs. 3 lakhs in a short span and to deposit the same with the Municipality which on its own account was unable to discharge its financial responsibilities on account of severe financial crisis and only thereafter to consider their case to release of pension and arrears of pensionary benefits was highly improper on the part of the respondent-Municipality. The retired employees who had only the CPF amount to fall back upon for sustaining them for rest of their lives, could not have been asked to risk deposit the amount which they would have had to raise perhaps from the borrowed funds and thereafter,

to hope that the Municipality would fulfill its commitment of payment of pension and its arrears. Such expectations were highly unreasonable, unrealistic, improper and would offend the principles of reasonableness and equality enshrined under Article 14 of the Constitution of India. I do not see that there was any prohibition against such adjustments in pension rules as contended by the learned advocate for the respondents.

14. In the result, the petitions are allowed. The orders of the respondent-Municipality of striking off the names of the petitioners from the pension scheme optees are set aside. The respondent-Municipality is directed to provide pensionary benefits as per the scheme to the petitioners. The pension arrears be released after adjustment of CPF amount with interest required to be deposited with the petitioner for availing of the pension scheme. While doing so respondents shall also provide for calculation of the amount so adjusted. The petitioners shall receive regular pension prospectively once the scheme is made operative for all pensioners. The petitioners shall receive the benefits from the said scheme along with other original retirees.

15. With these directions, the petitions are disposed of. Rule is made absolute with no order as to costs.

(Akil Kureshi,J.)

(raghu)